

580 New

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**2 Name Knauff Sunny L.3 Prisoner Number X084754 Institutional Address VSPO PO Box 965 Chowchilla Ca 93610-0096FEB 27 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**8 Sunny Lynne Knauff
(Enter the full name of plaintiff in this action.)

9 vs.

10 Tina Hornbeck

CV

08

Case No. 1148
(To be provided by the clerk of court)

JSW

11 **PETITION FOR A WRIT**
12 **OF HABEAS CORPUS**

(PR)

13
14 (Enter the full name of respondent(s) or jailor in this action)16 **Read Comments Carefully Before Filing In**17 **When and Where to File**18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
25 District Court for the district in which the state court that convicted and sentenced you is located. If
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
27 your petition will likely be transferred to the district court for the district that includes the institution
28 where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland):
Superior Court of California, County of Butte
1 County St. Oroville
Ca 95965

15 Court _____ Location _____

16 (b) Case number, if known CMP21308

17 (c) Date and terms of sentence 11-01-04 21 years 85%

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes No

20 | Where?

21 Name of Institution: Yavapai State Prison for Women

22 Address: 21633 Ave 24 Po Box 99
23 Chowchilla Ca 93610-0099
24

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for

more than one crime, list each crime separately using Penal Code numbers if known. If you are

25 challenging more than one sentence, you should file a different petition for each sentence.)

26 PC 192(a), 12022, 5 (9) (1)

27 Voluntary Manslaughter with a gun enhancement
28

1 3. Did you have any of the following?

2 Arraignment: Yes No _____3 Preliminary Hearing: Yes _____ No 4 Motion to Suppress: Yes _____ No

5 4. How did you plead?

6 Guilty _____ Not Guilty _____ Nolo Contendere 7 Any other plea (specify) N/A8 5. If you went to trial, what kind of trial did you have? N/A

9 Jury _____ Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? N/A Yes _____ No _____

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No _____13 (b) Preliminary hearing Yes _____ No 14 (c) Time of plea Yes No _____15 (d) Trial N/A Yes _____ No _____16 (e) Sentencing Yes No _____17 (f) Appeal Yes No _____18 (g) Other post-conviction proceeding N/A Yes _____ No _____19 8. Did you appeal your conviction? Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____22 Year: 2005 Result: Denied23 Supreme Court of California Yes No _____24 Year: 2006 Result: Denied on 2/13/0825 Any other court Yes _____ No

26 Year: _____ Result: _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes No
2

3 (c) Was there an opinion? Yes No
4

5 (d) Did you seek permission to file a late appeal under Rule 31(a)? Yes No
6
7

8 If you did, give the name of the court and the result:
9

10 _____
11 _____
12 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
13 this conviction in any court, state or federal? Yes No
14

15 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
16 challenged the same conviction you are challenging now and if that petition was denied or dismissed
17 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
18 for an order authorizing the district court to consider this petition. You may not file a second or
19 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
20 U.S.C. §§ 2244(b).]
21

22 (a) If you sought relief in any proceeding other than an appeal, answer the following
23 questions for each proceeding. Attach extra paper if you need more space.
24

25 I. Name of Court: _____
26

27 Type of Proceeding: _____
28

29 Grounds raised (Be brief but specific):
30

31 a. _____
32

33 b. _____
34

35 c. _____
36

37 d. _____
38

39 Result: _____ Date of Result: _____
40

41 II. Name of Court: _____
42

43 Type of Proceeding: _____
44

45 Grounds raised (Be brief but specific):
46

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
10 b. _____
11 c. _____
12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
18 b. _____
19 c. _____
20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ✓

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: 5th amendment violation, 14th amendment violation
6 6th amendment violation.

7 Supporting Facts: The court violated my rights by giving me
8 upper term on both the controlling case and the enhancement,
9 based on statements made by myself in a presentence interview
10 outside of the advise of council. Then used these same

11 Claim Two: 6th amendment violation and 14th amendment
12 violation.

13 Supporting Facts: There are cases that have concluded that
14 beyond a prior conviction, which does not apply to me (Ex C 1&2)
15 any fact that increases a penalty for a crime beyond the statu
16 statutory maximum, which would be mid term, must be tried and
17 proven.

18 pClaim Three: _____

19 _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____
26 _____
27 _____
28 _____

1 statements therof to sentence me. (see exhibits A&B PP1-3) The
2 The judge made several statements to the fact that he had
3 considered these reports. Once these factors are no longer
4 relavent there must be a recalculation og aggriavaing and
5 mitigating factors. (see ex D p1) As to the mental condition
6 that should also be factored into the equation of mitigating
7 factors. Also see that the facts that are used to establish
8 aggravation came from others also culpable in the crime
9 wanting to take the focus of of themselves. (ex **C** 1&2) Court
10 used these same sources for aggravating the gunuse enhancement as
11 well.(Ex E)

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 proved beyond a reasonable doubt. A sentencing courts authority
2 to impose an aggravated sentence depends upon addition fact
3 finding by a jury trial and proof beyond a reasonable doubt
4 on those facts. The court committed error in going beyond the
5 facts established not supported by the plea in and of itself.
6 The federal sntedncing guidlines violate the 6th amendment
7 right to a jury trial by providing for an increase to max term
8 of presumptive sentencing ranges based on facts that are found
9 by a sentencing judge rather than heard by or decided by a jury,
10 (ex B p4&5) There was a timely objection to the upper term. (ex F)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
17
19
20
21
22
23
24
25
26
27
28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases: Apprendi v New Jersey(2000)120 S.Ct. 2348 pp 2354-2366, Ring v Arizona
4 122 S.Ct 2428, Blakely v. Washington(2004) 542 U.S. ___, U.S. v Booker (05)
5 543 U.S. ___, U.S. v. Laylor(2nd Cir 1999) 168 F.3d 276, Miranda v Arizona
6 1966)384 U.S. 436, U.S. v. Powell(1978) 591 F.2d 833, Grobart v.

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 2-18-08

14 Date



15 Signature of Petitioner

16
17
18
19
20 (Rev. 6/02)

21
22
23
24
25
26
27
28

EXHIBIT A

PLEA OF GUILTY/CHANGE OF PLEA

Court grants DA's motion to amend Complaint /Information to add count(s) _____, violation of _____ felony misd
 On motion of the People, complaint amended on its face by striking "Felony" and adding "Misdemeanor" on count(s) _____
 Defendant waives formal arraignment, advisement of rights and reading of the amended Complaint/Information
 Defendant advised of the maximum punishment. Defendant permitted to withdraw previous plea of not guilty.
 Defendant pleads GUILTY NO CONTEST to count(s) _____ B.A.C.
 Defendant pleads GUILTY with deferred entry of judgment to count(s) _____, conditions incorporated herein.
 Parties stipulate to deferred entry of judgment. Counsel enters plea on behalf of defendant.
 Defendant admits priors/enhancements VOP as to violating allegation(s) _____ allegation(s) _____ dismissed/stricken
 Court takes judicial notice of the plea entered in case _____ and finds defendant in violation of probation.
 Prior(s) found valid invalid Court finds defendant in violation of probation
 Case dismissed Count(s) _____ dismissed on DA's motion with a Harvey Waiver pursuant to a negotiated disposition. Enhancements/priors stricken _____ in the interest of justice.
 Defendant is advised /understands that a VC23103/23103.5 conviction can be charged as a prior, increasing penalties on a subsequent conviction of VC23152a/b.

WAIVER OF RIGHTS

Defendant advised of, understands, and knowingly and voluntarily, expressly and explicitly waives the following rights
 to counsel privilege against self-incrimination to jury trial/court trial to confront/cross-examine witnesses
 to probation/parole hearing.
 After questioning the defendant, the Court find the defendant understands the nature of the charge(s), the elements of the offense, the pleas/defenses thereto, the possible range of penalties and other consequences of the plea (including effects of admission to any priors)
 No threats and promises Defendant not under influence of drugs/alcohol advised of DMV suspension
 Court finds a factual basis for the plea Counsel stipulates to factual basis Probable cause for arrest
 Defendant is advised this conviction may serve as a basis to revoke probation or parole may make you ineligible for Diversion in the future Defendant advised per PC1016.5 per PC 12021 (c)(1)
 Counsel consents to the plea admission Counsel waives rights on behalf of the defendant
 Above waivers taken as to admitted prior/enhancements Defendant advised of enhancement on subsequent convictions
 Court accepts plea admission Written Plea of Guilty/No Contest signed, incorporated in and made part of the record
 Pre-sentence probation report ordered Probation report waived Arbuckle waiver taken Time waived for sentencing

JUDGMENT/SENTENCE

Deft. waives formal arraignment and states there is no legal cause why sentence and judgment should not now be pronounced.
 Court has received, read and considered the Orig Suppl Probation Rpt executes same to be filed the 1203.03 PC Report Statement in Aggravation Mitigation PC288.1 Report Other: _____
 Court finds defendant guilty of the crime(s) Court determines there is a factual basis for the plea/conviction admission of VOP
 Court does does not find this to be an unusual case.
 The Court finds: defendant has violated probation enhancement(s) to be true
 Imposition of sentence is suspended and deft is placed on Summary Formal probation for a term of _____ months.
 Probation is reinstated continued on all prior terms and conditions of probation modified as set forth in the attached terms and conditions.
 Defendant accepts conditions of probation Probation order incorporated herein Defendant furnished copy of conditions
 Defendant's request for probation is denied. Probation is terminated Successfully Unsuccessfully
 Defendant to serve _____ months days hours in jail Plus _____ days for FTA VOP In lieu of fine
 _____ months days hours suspended credit for time served pursuant to PC2900.5 o Terminal Sentence
 Sentence to be served consecutively concurrently with any other sentence Work hours fine converted to jail time.
 Defendant to report to jail by _____ at _____ Weekends authorized. TB test
 Counsel stipulate to alternative programs Release programs authorized denied I.I.D. ordered
 Pay a fine of \$ _____ Pay Restitution Fund fine of \$ _____ Pay to Superior Court County Central Collections
 Fine due by _____
 1214.1(a) PC and fine accelerated advisement
 Complete _____ hours on Court Work Program
 Pay \$25 dollar fee.
 License restricted _____ per VC 13202.5
 License suspended/revoked _____ days months years
 Pay Criminal Justice Administration Fee - GC29550.1/29550.2
 Defendant advised of right to appeal
 Court is advised that \$ _____ in expenses have been incurred in attorneys fees.
 Matter is referred to Court Compliance for determination of defendant's ability to pay
 Court finds defendant does not have the ability to reimburse

Mr. Hostettler requests that the probation report be sealed and in payment. Motion is granted.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF BUTTE

PEOPLE -vs- KNAUFF, SUNNY LYNNE
COMPLAINT FILED: 5/21/04 1. 187(a) PC
CUSTODY STATUS: (NO BAIL) 1465.8 PC
APPEARANCE: B12 9/17/04 8:30 am PRELIMINARY HEARING
*SPECIAL SET

** CASE NBR: CM021308 **

JUDGE ROBERT CHIEMAN

CLERK

A. VIRAMONTES

CSR

R. WELLS

APPEARANCES

Deputy DA C. Carlos
 Defendant present by video not present
 without attorney in custody
 with/by attorney D. HOPTOWIT
 Appear PC977 Special appearance by _____
 PC977 waiver executed in open court filed
 Probation Officer _____
 present/sworn to interpret _____

WARRANTS

Defendant fails to appear Bail forfeited
 _____ warrant ordered DA to file Decl for A/W _____
 Bench/Arrest warrant ordered Bail fixed at \$ _____
 Probation revoked OR revoked No cite & release/OR _____
 Warrant recalled Released Held until _____
 Bail forfeiture set aside Bail reinstated exonerated
 Motion of bondsman or surety to set aside forfeiture is _____
 granted denied costs \$ _____

ARRAIGNMENT

Defendant acknowledges true name as charged True name is _____
 Defendant is provided copy of the complaint information indictment Defendant is advised of the charges/allegations
 Counsel accepts appointment Court grants _____ motion to substitute in as counsel for defendant.
 Defendant/counsel waives arraignment, reading of the complaint information indictment VOP petition and advisement of rights.
 Statement of Rights signed, incorporated in and made part of the minute order Defendant's financial statement filed
 Defendant informed of rights to counsel reasonable bail jury/court trial confront/cross examine witnesses
 against self incrimination speedy trial VOP hearing to a preliminary examination within 10 Court days following arraignment
 Defendant advised maximum penalties minimum mandatory penalties of enhancement on subsequent convictions that if on probation or parole, same may be revoked per PC 1016.5 possible assessment of Public Defender fees
 Public Defender _____ appointed Public Defender _____ relieved
 Defendant to retain counsel Private Counsel _____ appointed
 Court finds defendant understands right to an attorney and to the appointment of an attorney at State expense if unable to obtain his/her own and knowingly and voluntarily waives the right to counsel. Defendant advised of risks of self-representation pursuant to Faretta.
 Defendant executes extradition waiver. Court executes same.

PLEA OF NOT GUILTY/WAIVERS

Defendant pleads not guilty cts: _____
 denies enhancements/priors V.O.P.
 Defendant understands and personally waives right to jury trial
 waives right to speedy trial Counsel joins in waiver(s)
 Case(s) _____ consolidated for purpose of trial.
 Counsel stipulate to submit the preliminary hearing on the police reports Defendant waives one sitting rule.

CALENDAR SETTINGS

Deft ordered to appear BCCH DO C P G
 Continued on People's Motion Defense Motion
 By Court By Stipulation By Probation
 Further Arraignment/EOP _____ at _____
 Pretrial/Dispo set _____ at _____
 Preliminary Hearing _____ at _____
 Trial Readiness Conf. _____ at _____
 Jury trial confirmed _____ at _____
 Court trial _____ at _____
 Admit/Deny VOP _____ at _____
 VOP/Evidentiary Hearing _____ at _____
 Probation/Sentencing 10-18-04 B12 at 8:30A
 Dispo following VOP _____ at _____
 Diversion Hrg/Review _____ at _____
 D.V OR Hrg/Review _____ at _____
 Continued to: _____ at _____
 for _____
 Deft. does does not waive time limited time waiver
 Time waiver withdrawn Special set time est _____
 Vacated _____
 Case(s) trailing pursuant to Standing Order BCSC 2003-9

(Mr. Hoptowit advises that the defendant will not participate in any interviews with probation and that any information will be submitted see next page)

Mr. Hoptowit advises that the defendant will not participate in any interviews with probation and that any information will be submitted see next page)

1 The matter will be referred to Probation for
2 presentence report.

3 MR. CARLOS: Your Honor, is that the only
4 pending matter against Ms. Knauff?

5 THE COURT: It's the only one we pulled. If
6 there are other matters --

7 MR. CARLOS: She's on misdemeanor probation
8 in CM017188. It's A Penal Code Section 476 case.

9 THE COURT: That's the one I mentioned.

10 MR. CARLOS: Okay. She was also in Prop 36
11 at the time in NCR83318 and the other one was
12 previously dismissed.

13 THE COURT: To the extent she was still in
14 active Prop 36, the Court will find her in violation
15 of that as well and find her in violation.

16 MR. HOPTOWIT: I just wanted to make sure we
17 didn't have any loose ends.

18 THE COURT: I want to pull them all together
19 and refer them all. Is time waived for sentencing?

20 MR. HOPTOWIT: No.

21 THE COURT: Will you waive one day?

22 MR. HOPTOWIT: Yes.

23 THE COURT: All right. We'll set sentencing
24 on October 18th. That will be at 8:30. Yes, 8:30.

25 MR. HOPTOWIT: Your Honor, I would ask that
26 the clerk put on the referral that Ms. Knauff will not

1 participate in any interview with Probation. She's
2 declining to be interviewed by Probation. If we are
3 going to provide a statement we'll provide it in
4 writing directly to Probation, to the Court and to the
5 prosecution and I'm going do write them a letter to
6 that effect.

7 THE COURT: Would Probation have information
8 on Ms. Knauff from prior reports?

9 MR. HOPTOWIT: Yes.

10 MR. CARLOS: Yes.

11 THE CLERK: She's on court probation in
12 CR33818.

13 THE COURT: Probation will be revoked. In
14 that matter probation revoked as well.

15 Ms. Knauff will be held without bail pending
16 sentencing. Thank you, Mr. Hoptowit and Mr. Carlos.

17

18

19

20

21

22

23

24

25

26

EXHIBIT B

1 OROVILLE, BUTTE COUNTY, CALIFORNIA, NOVEMBER 1, 2004

2 THE COURT: All right, Ms. Knauff is present in
3 custody with her attorney, Mr. Hoptowit. The People are
4 represented by Mr. Carlos.

5 Are the parties ready to proceed?

6 MR. CARLOS: Yes, Your Honor.

7 MR. HOPTOWIT: Yes.

8 THE COURT: The Court has received, read and
9 considered the probation officer's report and signed it
10 to so indicate.

11 Mr. Hoptowit, does your client waive formal
12 arraignment for judgment and sentence?

13 MR. HOPTOWIT: Yes, Your Honor.

14 THE COURT: Any legal reason or cause why
15 judgment and sentence cannot now be pronounced?

16 MR. HOPTOWIT: No, Your Honor.

17 THE COURT: I will note that the Court did not
18 receive sentencing statements from either party. It's
19 the Court's intent to impose the upper term on the
20 voluntary manslaughter with an upper term enhancement
21 for the gun use.

22 Counsel wish to be heard?

23 MR. HOPTOWIT: I do, Your Honor.

24 First of all, I would ask if the Court records
25 reflect that I had requested that the Court and the
26 court staff communicate with probation advising them

1 that my client did not want to be interviewed by them.
2 I hope some of us recall that.

3 THE COURT: The clerk's minute order of
4 September 17th indicates that. I cannot say whether
5 probation was contacted with that information.

6 MS. WHITLOCK: No, we were not.

7 THE COURT: Does that have any effect on us
8 going forward today?

9 MR. HOPTOWIT: It doesn't.

10 THE COURT: To the extent necessary, the Court
11 apologizes. It was reflected in the notes and Ms. Swint
12 was present when it happened, so.

13 MR. HOPTOWIT: In that regard I have two
14 requests. Number 1, the Court disregard any of her
15 statements in making the sentence choices in this
16 matter, and further, that the Court order that her
17 probation report be sealed in as much it contains
18 statements that were made outside the advice of counsel,
19 and this Court was on notice as was probation, by being
20 present, that she declined to be interviewed by
21 probation.

22 THE COURT: Mr. Carlos, on that issue alone?

23 MR. CARLOS: Your Honor, I'll submit it.

24 THE COURT: The Court will seal the probation
25 report. The Court is not relying on the statements of
26 Ms. Knauff in reaching the sentencing choices it must

1 THE COURT: Let me go through -- before I do the
2 sentencing let you know the factors in aggravation the
3 Court intends to consider.

4 The crime in this matter obviously involved
5 great violence and great bodily injury. The gentlemen
6 died. It appeared from the probation report that he was
7 either sitting passively or was sleeping at the time
8 that he was shot through the head with the rifle that
9 has been associated with the defendant. The matter was
10 originally charged as a first degree murder with special
11 circumstances. And frankly, other than the possible
12 failure of witnesses to convince a jury based upon their
13 status, drug addiction or otherwise, it looks to the
14 Court as if this was indeed a first degree murder case
15 with special circumstances.

16 The Court was not privy to the plea bargain
17 negotiations that occurred between the People and the
18 Defense. That does not change the Court's mind.
19 Voluntary manslaughter must be premised upon a crime
20 that's involved in a heat of passion or imperfect self
21 defense. As much I tried, I cannot wrap these facts
22 around any of these theories of voluntary manslaughter.
23 The Court will find the victim was particularly
24 vulnerable, sitting in a chair in his living room with
25 his back to the shooter, apparently, from the forensics
26 that were revealed in the probation report and may have

1 been asleep.

2 Defendant went to the victim's home with the
3 intent -- with the possession of a firearm with the
4 intent to rob him of drugs and money, and that had been
5 articulated to others through their statements not
6 through her statement. The defendant was on probation
7 at the time of the crime, her ostensibility will go to
8 her statement. Well, others testified that she had told
9 them -- not testified, but told probation that she went
10 there to steal some money so she could get into a drug
11 program to avoid incarceration in the Prop. 36 Court.

12 The Court finds all of those to be factors in
13 aggravation. The Court cannot identify any factors in
14 mitigation other than perhaps the defendant does not
15 have a significant prior record; although, her prior
16 record does involve 3 misdemeanors that she's in
17 violation of probation on as a result of this matter.

18 So I'll hear from Counsel on each of those, if
19 you wish.

20 MR. HOPTOWIT: Your Honor, I think it's
21 inappropriate for the Court to consider that the crime
22 involved great violence and great bodily injury as much
23 that homicide by definition probably involves all of
24 those things. Secondly, I would object to the Court
25 considering any factors in aggravation that are not
26 supported by the plea in and of itself. Inasmuch as the

1 way I read these cases they sort of are self-fulfilling
2 because the constitution requires that a person be
3 advised of the potential maximum penalty and that a plea
4 form also requires that.

5 So that the Court has some basis for making a
6 finding that a defendant makes a knowing and
7 intelligently, freely, voluntary waiver of his rights
8 with a full understanding of the potential consequences.
9 And way I read Wagner in those cases is that if you have
10 a jury verdict then you have facts before you. But
11 beyond that you simply have the plea to the offense, and
12 basically the minimal facts necessary to judicially
13 sustain the conviction I think requires a trial or an
14 admission or facts, unless you're relying of course on a
15 persons' prior record. So to the extent that any of the
16 circumstances that the Court is relying upon that don't
17 meet that criteria I would object so that Ms. Knauff's
18 appellate rights are protected.

19 Finally, Your Honor, I would indicate that there
20 was an early admission of responsibility for the death.
21 The circumstance as to what that death was, whether it
22 was a first degree murder or a manslaughter or whatever,
23 are irrelevant to early admission, responsibility, and
24 to the use of the firearm. So I think a minimally
25 significant prior record and early admission of
26 responsibility, the fact that this young woman has never

EXHIBIT C

1 way I read these cases they sort of are self-fulfilling
2 because the constitution requires that a person be
3 advised of the potential maximum penalty and that a plea
4 form also requires that.

5 So that the Court has some basis for making a
6 finding that a defendant makes a knowing and
7 intelligently, freely, voluntary waiver of his rights
8 with a full understanding of the potential consequences.
9 And way I read Wagner in those cases is that if you have
10 a jury verdict then you have facts before you. But
11 beyond that you simply have the plea to the offense, and
12 basically the minimal facts necessary to judicially
13 sustain the conviction I think requires a trial or an
14 admission or facts, unless you're relying of course on a
15 persons' prior record. So to the extent that any of the
16 circumstances that the Court is relying upon that don't
17 meet that criteria I would object so that Ms. Knauff's
18 appellate rights are protected.

19 Finally, Your Honor, I would indicate that there
20 was an early admission of responsibility for the death.
21 The circumstance as to what that death was, whether it
22 was a first degree murder or a manslaughter or whatever,
23 are irrelevant to early admission, responsibility, and
24 to the use of the firearm. So I think a minimally
25 significant prior record and early admission of
26 responsibility, the fact that this young woman has never

1 been on formal probation previously, that her prior
2 record consists of misdemeanors, the Court is denying
3 probation because of the nature of the offense, are all
4 factors in mitigation that could serve to balance any
5 facts that this Court may consider with or without
6 Blakely, and therefore the Court should impose the mid
7 term.

8 To the extent the Court's going to rely on facts
9 in the probation report, I would simply indicated that
10 the two persons for whom those facts are used from are
11 two persons who were at best, accessories, more than
12 likely aiders and abettors, and the facts would equally
13 support given who the owner of the firearm was, who the
14 driver of the vehicle was, that either of them were
15 involved in the actual killing of the deceased here as
16 much as Ms. Knauff, who was sort of last in line to be
17 talked to, and therefore charged, and one can easily
18 envision a scenario where if she was spoken to first and
19 then the other two in order that the third person in
20 that sequence would been charged with the first degree
21 murder.

22 THE COURT: A couple of comments. First of all
23 with regard to the Blakely constitutional issue, that
24 matter is I think well articulated at this point as part
25 of the record and subject to appeal. I will note that
26 the Blakely case differed from the California scheme in

EXHIBIT D

1 avoid returning to jail for a probation violation (testing positive for drug use). She later
 2 "bragged" about murdering the victim to enhance her status in the drug subculture. The
 3 defendant then involved a third party when she again appeared to use sex as a tool to
 4 manipulate her partner in the destruction of the murder weapon. There appears to be no
 5 motive for committing the crime. According to autopsy findings, the victim was asleep when
 6 shot in the back of the head. It is noted that the defendant has a mental condition (bi-polar
 7 disorder) and a severe drug addiction. In view of the brutality of the crime, and the numerous
 8 opportunities the defendant has had to address her drug problem, it does not appear she is
 9 amenable to treatment. Based on the aforementioned, the defendant's case does not appear to
 10 be unusual nor does a grant of probation appear to be in the best interests of justice.
 11

12 Further, based on the seriousness of the crime and the callous nature of the defendant,
 13 she does not meet the criteria established for a grant of probation in Rule of Court 4.414.
 14

15 Pursuant to Rules of Court 4.408, 4.421, and 4.423, the upper term appears to be an
 16 appropriate sentence in Count I, and the Special Allegation, in that the circumstances in
 17 aggravation outweigh the circumstances in mitigation. In mitigation, the instant offense
 18 appears to be the defendant's first felony conviction. In aggravation, the defendant was on
 19 probation upon commission of the instant offense (CM-017188 and NCR-83318). She
 20 performed poorly while on probation. The defendant's drug induced state upon commission of
 21 the instant offense is viewed as an aggravating circumstance, not an untreated illness. The
 22 victim was particularly vulnerable. He was shot in the back of the head as he slept. The
 23 defendant, with the intent to rob the victim, exercised a high degree of vicious callousness
 24 when she chose to kill him. She planned to commit the crime, as evidenced by the fact she
 25 spoke about it for several days while seeking a loaded gun. The defendant induced two other
 26 people to participate in the crime. She threatened to harm one person who could place her at
 27
 28

}

)

EXHIBIT E

)

1 Court would deny probation in this matter making
2 findings that the nature, seriousness and circumstances
3 of this case are extraordinary, the manner in which the
4 crime was carried out demonstrated some degree of
5 criminal sophistication. She went to the victims' home
6 with a loaded weapon with the intent to rob him. The
7 defendant's prior record of criminal conduct indicated a
8 pattern of regular and increasingly serious criminal
9 conduct and the defendant's prior performance on
10 probation has been unsuccessful.

11 The Court's intent is to impose the upper term
12 as base term for voluntary manslaughter finding
13 circumstances in aggravation and mitigation -- excuse
14 me, finding circumstances in aggravation outweigh those
15 in mitigation. The Court is also going to impose the
16 upper term for the enhancement. Findings on the
17 enhancement includes the fact she not only possessed the
18 weapon, but showed it and used it. She discharged the
19 firearm. Another enhancement could have been added
20 which would have been a 20 year enhancement, but was
21 not. The Court will therefore impose the upper term of
22 10 years on that enhancement.

23 With the regard to the underlying offense, 192,
24 the Court will find the crime involved great violence.
25 The victim was particularly vulnerable, the crime was
26 premeditated -- at least the entry of the home to commit

EXHIBIT F

MISCELLANEOUS MINUTES

Defendant Krauff, Sunny Lynne Case No CM021308

Matter comes before the court for Probation Report and Sentencing
 Court has read and considered the documents filed by [] People [] Defendant [] Other
 Counsel heard in argument. [] Matter is submitted.
 Motion(s) [] granted [] denied [] for the following reasons: _____

Other: Mr. Hoytowitz objects to the upper term
pursuant to People v. Blakely
Counsel heard in argument

P R O O F O F S E R V I C E

<u>Sunny Knauff</u> , Petitioner/Defendant,)	cs. No. <u>CM021308</u>
v)	(FRCivP Rule 4)
)	(FRCivP Rule 5)
<u>Tina Hornbeck</u> , Respondent(s))	(CCP §§1011, 1012)
)	(CCP §§1013, 1013(a))

I, the undersigned, certify that I am over the age of eighteen years, and a () party/() non-party to this action.

On 18, 2006, I served copy of Federal writ of Habeas Corpus

() by placing in an envelope addressed to the person(s) herein listed, and by depositing envelope with Correctional Officer Sandy with First Class postage (or CDC-193) attached and for delivery to the United States Postal Service; or () by personal service upon person herein listed at _____ hours:

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 18 day of February 2008 at Chowchilla (city), California (state) in Madera (county) County.

Sunny Knauff
(signature) DECLARANT

Print Name Sunny Knauff
Valley State Prison for Women
W# X088475, Unit P1 Dorm 04 Bed 4 UP
Address P.O. Box 96
City Chowchilla, State CA
Zip 93610-0096

RECEIVED
JY

FCO 257008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

94102-3483

U.S. District Court of
Golden Gate Ave
San Francisco, CA

DUNNY MURRAY
JSPN
P.O. Box 96
Cheswick, Ca
93610-0096

